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Re: Agway, Inc.  
Agway General Agency, Inc.  
Brubaker Agronomic Consulting Service, LLC  
Country Best Adams, LLC  
Country Best-DeBerry, LLC  
Feed Commodities International, LLC  
Case No. 02-65872 Chapter 11 Jointly Administered  
Motion by Liquidating Trustee to Expunge Claim filed by Allensfield Farm

### **LETTER DECISION AND ORDER**

At the motion calendar, held on October 26, 2003, in Utica, New York, the Court heard oral argument on the Liquidating Trustee's motion to expunge the claim of Rudy Allen, James R. Allen and Carlene S. Allen Individually and d/b/a Allensfield Farm ("Allensfield Farm"). Of particular significance was the issue of whether a claim asserting damages to Allensfield Farm's dairy herd as a result of Agway's alleged negligence in supplying it with a feed formula for its cows could be construed as a "personal injury tort," which would have deprived the Court of jurisdiction pursuant to 28 U.S.C. § 157(b)(5).

The Court has had an opportunity to review the matter further and concludes that the facts

in this contested matter do not support the argument by Allensfield Farm that its cause of action based on negligence, asserted in its claim in this Chapter 11 case and its counterclaim against Agway, interposed in an action pending pre-petition in the Court of Common Pleas in Chester County, PA., constitutes a “personal injury tort.” “Personal tort” is defined as “[a] tort involving or consisting in an injury to one’s person, reputation or feelings, as distinguished from an injury or damage to real or personal property.” BLACK’S LAW DICTIONARY 1327 (8<sup>th</sup> ed. 2004). As pointed out by the court in *In re von Volkmar*, 217 B.R. 561 (Bankr. N.D. Ill. 1998),

the term “personal injury” encompasses “any injury which is an invasion of personal rights, and in this signification it may include such injuries to the person as libel or slander, criminal conversation, malicious prosecution, false imprisonment, and mental suffering.”

*Id.* at 566, quoting BLACK’S LAW DICTIONARY 786 (6<sup>th</sup> ed. 1990). The court in *von Volkmar* concluded that “personal injury” includes both bodily and psychiatric harm to an individual, as opposed to property damage. *Id.*

In this case, Allensfield Farm has alleged injury to its personal property, namely its dairy cows, as a result of Agway’s alleged negligence. Therefore, it is clear that 28 U.S.C. § 157(b)(5) does not prevent the Court from exercising core jurisdiction over the claim of Allensfield Farm, based on allegations of Agway’s negligence.

Accordingly, the Court will schedule an evidentiary hearing on the Liquidating Trustee’s motion to expunge claim #2826 of Rudy Allen, James R. Allen and Carlene S. Allen, Individually and d/b/a Allensfield Farm, 76 Stoney Lane, Nottingham, PA, 19362. Said hearing will take place on Wednesday, January 5, 2005 at 9:00 A.M. at the U.S. Courthouse, 10 Broad Street, Utica, New York, 13501.

Dated at Utica, New York

this 5th day of November 2004

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge